

JS 44 (Rev. 03/24)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Howard Julien, M.D.

(b) County of Residence of First Listed Plaintiff Hudson County, NJ  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Rebecca Price/ Norris McLaughlin, PA, 515 West  
Hamilton Street, Allentown, PA 18101

**DEFENDANTS**

Honorable Denis Richard McDonough as Acting Secretary of Veterans Affairs

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

| CONTRACT  | TORTS  | FORFEITURE/PENALTY   | BANKRUPTCY  | OTHER STATUTES  |   |
|---|--|--|---|---|---|
| <input type="checkbox"/> 110 Insurance<br><input type="checkbox"/> 120 Marine<br><input type="checkbox"/> 130 Miller Act<br><input type="checkbox"/> 140 Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 151 Medicare Act<br><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)<br><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br><input type="checkbox"/> 160 Stockholders' Suits<br><input type="checkbox"/> 190 Other Contract<br><input type="checkbox"/> 195 Contract Product Liability<br><input type="checkbox"/> 196 Franchise | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault, Libel & Slander<br><input type="checkbox"/> 330 Federal Employers' Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury<br><input type="checkbox"/> 362 Personal Injury - Medical Malpractice | <input type="checkbox"/> 365 Personal Injury - Product Liability<br><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability<br><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability<br><b>PERSONAL PROPERTY</b><br><input type="checkbox"/> 370 Other Fraud<br><input type="checkbox"/> 371 Truth in Lending<br><input type="checkbox"/> 380 Other Personal Property Damage<br><input type="checkbox"/> 385 Property Damage Product Liability   | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881<br><input type="checkbox"/> 690 Other<br><b>LABOR</b><br><input type="checkbox"/> 710 Fair Labor Standards Act<br><input type="checkbox"/> 720 Labor/Management Relations<br><input type="checkbox"/> 740 Railway Labor Act<br><input type="checkbox"/> 751 Family and Medical Leave Act<br><input type="checkbox"/> 790 Other Labor Litigation<br><input type="checkbox"/> 791 Employee Retirement Income Security Act<br><b>IMMIGRATION</b><br><input type="checkbox"/> 462 Naturalization Application<br><input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158<br><input type="checkbox"/> 423 Withdrawal 28 USC 157<br><b>INTELLECTUAL PROPERTY RIGHTS</b><br><input type="checkbox"/> 820 Copyrights<br><input type="checkbox"/> 830 Patent<br><input type="checkbox"/> 835 Patent - Abbreviated New Drug Application<br><input type="checkbox"/> 840 Trademark<br><input type="checkbox"/> 880 Defend Trade Secrets Act of 2016<br><b>SOCIAL SECURITY</b><br><input type="checkbox"/> 861 HIA (1395ff)<br><input type="checkbox"/> 862 Black Lung (923)<br><input type="checkbox"/> 863 DIWC/DIWW (405(g))<br><input type="checkbox"/> 864 SSID Title XVI<br><input type="checkbox"/> 865 RSI (405(g))<br><b>FEDERAL TAX SUITS</b><br><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)<br><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act<br><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))<br><input type="checkbox"/> 400 State Reapportionment<br><input type="checkbox"/> 410 Antitrust<br><input type="checkbox"/> 430 Banks and Banking<br><input type="checkbox"/> 450 Commerce<br><input type="checkbox"/> 460 Deportation<br><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br><input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)<br><input type="checkbox"/> 485 Telephone Consumer Protection Act<br><input type="checkbox"/> 490 Cable/Sat TV<br><input type="checkbox"/> 850 Securities/Commodities/Exchange<br><input type="checkbox"/> 890 Other Statutory Actions<br><input type="checkbox"/> 891 Agricultural Acts<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 895 Freedom of Information Act<br><input type="checkbox"/> 896 Arbitration<br><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision<br><input type="checkbox"/> 950 Constitutionality of State Statutes |
| <b>REAL PROPERTY</b><br><input type="checkbox"/> 210 Land Condemnation<br><input type="checkbox"/> 220 Foreclosure<br><input type="checkbox"/> 230 Rent Lease & Ejectment<br><input type="checkbox"/> 240 Torts to Land<br><input type="checkbox"/> 245 Tort Product Liability<br><input type="checkbox"/> 290 All Other Real Property  | <input checked="" type="checkbox"/> <b>CIVIL RIGHTS</b><br><input type="checkbox"/> 440 Other Civil Rights<br><input type="checkbox"/> 441 Voting<br><input type="checkbox"/> 442 Employment<br><input type="checkbox"/> 443 Housing/Accommodations<br><input type="checkbox"/> 445 Amer. w/Disabilities - Employment<br><input type="checkbox"/> 446 Amer. w/Disabilities - Other<br><input type="checkbox"/> 448 Education   | <input type="checkbox"/> <b>PRISONER PETITIONS</b><br><input type="checkbox"/> <b>Habeas Corpus:</b><br><input type="checkbox"/> 463 Alien Detainee<br><input type="checkbox"/> 510 Motions to Vacate Sentence<br><input type="checkbox"/> 530 General<br><input type="checkbox"/> 535 Death Penalty<br><input type="checkbox"/> <b>Other:</b><br><input type="checkbox"/> 540 Mandamus & Other<br><input type="checkbox"/> 550 Civil Rights<br><input type="checkbox"/> 555 Prison Condition<br><input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement |   |   |   |

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. 1331, Bivens v. Six Unknown Names Agents of FBI 403US388

Brief description of cause:  
Seeking injunction to prevent VA from releasing NPDB Report

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

November 18, 2024

SIGNATURE OF ATTORNEY OF RECORD

/s/Rebecca Price

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

HOWARD JULIEN, M.D.,

Plaintiff,

v.

Honorable Denis Richard McDonough as  
Acting Secretary of Veterans Affairs,

Defendant.

(Electronically Filed)

Civil Case No.:

**COMPLAINT**

Plaintiff, Howard Julien, M.D. (“Julien” or the “Plaintiff”), as and for its Complaint against Defendant, Honorable Denis Richard McDonough as Acting Secretary of Veterans Affairs (the “Board” or the “Defendant”) by and through its undersigned counsel, alleges:

**NATURE OF ACTION**

1. The Plaintiff is a licensed medical doctor who previously worked as an attending physician at the Philadelphia VA Medical Center in Philadelphia, Pennsylvania (the “VAMC”).
2. On or about June 30, 2018, a veteran (the “Veteran”) presented to the Emergency Department of the VAMC with fever and hemoptysis. Notably, the Veteran did not complain of chest pain upon presentation.
3. Despite Plaintiff providing the Veteran with the highest level of care, the Veteran unfortunately died.
4. Ultimately, the VAMC settled a medical malpractice claim filed by the Veteran’s estate.
5. Subsequently, Plaintiff left the employ of VAMC.
6. Thereafter, the VAMC Review Panel determined that Plaintiff was solely at fault for the Veteran’s death, ignoring evidence and testimony provided by Plaintiff.

7. Defendant has threatened to imminently file an unfavorable report of its determination to the National Practitioner Data Bank (the “NPDB”).

8. This action is contrary to the facts of the case, law and regulation, and will cause permanent harm to the Plaintiff.

9. The Plaintiff therefore seeks an order enjoining Defendant from filing an NPDB report.

### **JURISDICTION AND VENUE**

10. Plaintiff asserts a claim for the violation of Plaintiff’s constitutional rights secured by the Fifth Amendment, and accordingly jurisdiction is conferred on this Court by 28 U.S.C. § 1331 pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

11. Venue lies in the Court pursuant to 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to the claims occurred in this district.

### **PARTIES**

12. Plaintiff is a board-certified medical doctor.

13. The United States Department of Veterans Affairs (“VA”) is a federal agency, which owns and operates medical facilities throughout the United States. Upon information and belief, Defendant, the Honorable Denis Richard McDonough is the Acting Secretary of the Department of Veterans Affairs and is responsible for the rulemaking and administration of the Department. He is sued herein in his official capacity only.

### **FACTS**

14. On or about August 2, 2016, Plaintiff began employment for the United States Department of Veterans Affairs (the “VA”).

15. As of June 2018, Plaintiff was employed as an attending physician at the VAMC.

16. On or about June 30, 2018, the Veteran was admitted to the VAMC emergency department complaining of cough, dyspnea, hemoptysis, lower extremity edema, and weakness.

17. The Veteran did not complain of chest pain on the day in question.

18. Upon being notified of the Veteran's conditions and symptoms, Plaintiff coordinated care with the on-call cardiology fellow and appropriately triaged the Veteran to the VAMC Critical Care Unit ("CCU").

19. Neither Plaintiff nor the on-call cardiology fellow were notified of any change in the Veteran's condition over the night of June 30 to July 1, 2018.

20. Unfortunately, that night, the Veteran's condition deteriorated and the CCU inserted a central venous catheter and provided medication to treat him.

21. On the morning of July 1, 2018, while making his rounds in the CCU, Plaintiff recognized the Veteran's deteriorating condition and immediately ordered his transfer to the Hospital at the University of Pennsylvania for a cardiac catheter.

22. The Veteran was transferred and received the cardiac catheter the same day, July 1, 2018.

23. Unfortunately, despite Plaintiff's immediate reaction and attempts to get the Veteran the appropriate care, the Veteran passed away.

24. At some point prior to April 2022, the Veteran's estate levied a claim against the VA.

25. Plaintiff was not a named Defendant in the lawsuit, and no malpractice claim or suit naming the Plaintiff was ever filed in relation to the death of the Veteran.

26. Eventually, and without notifying the Plaintiff that any claim had been filed, nor that the VA would be settling, the VA settled the claim for a payment of money.

27. The settlement did not name the Plaintiff, and did not release him personally from liability in relation to the death of the Veteran.

28. Under 42 U.S.C.A. § 11131 of the Health Care Quality Improvement Act (“HCQIA”) entities are required to report settlements that the entity has made on behalf of individuals, to the NPBD.

29. 38 C.F.R. § 46.3 specifically requires the VA to report to the NPDB, “any payment for the benefit of a physician, dentist, or other license health care practitioner which was made as a result of a settlement of judgment of a claim of medical malpractice. The report will identify the physician, dentist, or other licensed health care practitioner for whose benefit the payment is made.” (emphasis added).

30. On information and belief, the VA’s practice is to settle claims of malpractice and make payment before convening a review panel to determine for whose benefit the payment would be made.

31. Pursuant to VHA Handbook 1100.17 paragraph 8i(1), “[p]ayment will be considered to have been made for the benefit of a physician, dentist, or other licensed health care practitioner when the Director, Office of Medical-Legal Affairs, notifies, per subparagraph 8h(1), the Medical Center Director that the conclusion (of at least a majority) of the Review Panel is that payment was related to substandard care, professional incompetence, or professional misconduct on the part of the physician, dentist, or other licensed health care practitioner.

32. VHA Handbook 1100.17 paragraph 8i(8) further states that “[p]ayments made for claims of malpractice in which the review panel determines that the standard of care was met and

there was no professional incompetence or professional misconduct, or which the panel determines are due solely to circumstances beyond the control of the practitioner (including, but not limited to: power failure, accidents unrelated to patient care, drugs mislabeled by the supplier, equipment malfunction, etc.) are not to be reported.”

33. On or about March 28, 2024, VAMC convened a Review Panel, comprised of three individuals to determine the responsible party for any substandard treatment that the Veteran received.

34. On or about March 11, 2024, unrelated to the Veteran’s treatment and ultimate death, Plaintiff left the employ of the VA and began work at another institution in another state.

35. Plaintiff fully participated in the Review Panel’s investigation, even after leaving VA Employment.

36. Plaintiff provided the Review Panel written and oral evidence to support his contention that he did not provide substandard care to the Veteran.

37. The VAMC refused to provide further evidence, which was in VAMC’s possession, that would have buttressed the Plaintiff’s claims and exonerated him.

38. On March 28, 2024, the Review Panel determined that Plaintiff had provided substandard care to the Veteran.

39. On information and believe, the Review Panel assigned blame to Plaintiff because Plaintiff had left VA employment and therefore the VA wanted to assign blame to the Plaintiff, rather than to the other VA medical professionals, including the ones who actually treated the Veteran on the night of June 30, 2018.

40. Thereafter, the Review Panel declined to reconsider its decision.

41. The Review Panel's final conclusions are based on information that is false and which the members of the Review Panel know to be false.

42. The Review Panel's decision to assign blame to the Plaintiff was unreasonable, arbitrary, and capricious and did not consider the evidence presented by the Plaintiff and other parties.

43. Subsequently, the Review Panel informed the Plaintiff that the VAMC would be entering a report in the NPDB.

44. Entry of this report into the NPDB would cause grave damage to the Plaintiff and would severely hamper his ability to find employment in the future and may cause his current employer to terminate him.

45. Plaintiff will be required to disclose the NPDB report to the state boards of medicine in every state in which he is or will become licensed to practice medicine.

46. Plaintiff will be required to disclose and defend the VA's NPDB report every time he applies or re-applies for privilege at a medical facility, employment, state medical licenses, or insurance.

47. Prior to this report, Plaintiff had never been reported to the NPDB.

48. Defendants knew or should have known that their actions violated the Fifth Amendment to the United States Constitution.

**COUNT I**  
**Injunctive Relief**  
**(as against all Defendants)**

49. Plaintiff realleges and incorporates herein by reference the allegations set forth in the prior paragraphs herein.

50. Plaintiff is highly likely to suffer imminent harm.



51. If Defendants make a negative report about Plaintiff in the NPDB, Plaintiff will be permanently and irreparably harmed.

52. Plaintiff may lose his current employment.

53. Plaintiff will be severely hampered in finding employment in his chosen profession for the rest of his career.

54. There is no adequate remedy at law which could remunerate Plaintiff for this egregious reputational and professional harm.

55. Plaintiff is likely to prevail on the merits.

56. Pursuant to the Fifth Amendment to the United States Constitution, “no person shall be deprived of life, liberty, or property without due process of law.”

57. Pursuant to 5 U.S.C. § 706, agency action may not be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”

58. Defendants here targeted Plaintiff and assigned him the responsibility for the alleged negligence because the Plaintiff had already left the employ of the VA.

59. The Review Panel thus prejudged the case and determined to find Plaintiff responsible from the outset.

60. The Review Panel failed to consider the evidence that Plaintiff presented, and instead constructed a report that exonerated all current VA employees, while laying the blame solely on Plaintiff.

61. Defendants’ actions here thus constituted arbitrary and capricious action, in violation of both the Administrative Procedure Act and the Fifth Amendment.

62. The Defendants will not be harmed by being restrained from filing an NPDB report that is false, and which they know is false.



63. The Plaintiff's hands are clean, whereas the Defendants seek to file a false NPDB report, therefore the equities favor the Plaintiff.

**WHEREFORE**, Howard Julien prays for judgment against Honorable Denis Richard McDonough as Acting Secretary of Veterans Affairs, and requests that this Honorable Court order an Injunction to prevent the Defendants from filing the Report with the NPDB, as well as reasonable attorneys' fees, and such other and further relief as the Court deems just and proper.

Dated: November 18, 2024

**NORRIS, McLAUGHLIN, PA**  
Attorneys for Plaintiff

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